

special damages¹ and reasonable out-of-pocket expenses incurred by the victim resulting from the filing of the charges or cooperating in the investigation and prosecution of the offense. *See* T.C.A. § 40-35-304(e). There is no designated formula or method for the computation of restitution. *State v. Smith*, 898 S.W.2d 742, 747 (Tenn. Crim. App. 1994), *perm. app. denied* 3/6/95. The sum of restitution must be reasonable, and does not have to equal the precise pecuniary loss. *Id.* It is not necessary for the sentencing court to determine restitution in accordance with the strict rules of damages applied in civil cases. *State v. Johnson*, 968 S.W.2d 883, 887 (Tenn. Crim. App. 1997). The Court must, however, consider the defendant's financial resources and future ability to pay. *See* T.C.A. § 40-35-304(d). In ordering restitution, the Court must specify the amount of time and payment, and may permit payment in installments. *See* T.C.A. § 40-35-304(c). The Court may not establish a payment or schedule extending beyond the expiration of the defendant's sentence. *See* T.C.A. § 40-35-304(g)(2). The amount of restitution may be waived, adjusted, or modified at any time upon petition of the defendant, victim, or District Attorney showing that the circumstances upon which the order was entered no longer exist, or that it would otherwise be unjust to require payment as previously ordered. *See* T.C.A. § 40-35-304(f). Any unpaid portion of the restitution may be converted to a civil judgment. *See* T.C.A. § 40-35-304(h).

III. Analysis

In the case at bar, based upon the testimony of the victim and the *Coin Dealer Newsletter* (March 1, 2013 issue, Hearing Exhibit 1), the Court finds that the amount of the victim's pecuniary loss for purposes of restitution is \$60,000.00.² The presentence report revealed that

¹ "Special damages" are those which are "the actual, but not the necessary, result of the injury complained of, and which in fact follow it as a natural and proximate consequence." *State v. Lewis*, 917 S.W.2d 251, 255 (Tenn. Crim. App. 1995).

² Although the proof showed that the victim's actual out-of-pocket losses were over \$60,000, the offense for which the Defendant was convicted in this case was Theft of Property, \$10,000-\$60,000. Accordingly, the Court finds that the maximum amount of restitution in this case is \$60,000.

the Defendant is married with one child, and reported no debts or assets. See Presentence Report, Pages 9-10. The Defendant is a high-school graduate, and briefly attended Motlow State Community College but did not graduate. Id. at Page 8. The Defendant has no mental or physical disabilities. Id. The Defendant has abused illegal drugs, and professed to have a “gambling problem” which resulted in “over \$10,000 worth of gambling debt [sic].” Id. at Page 3. The gambling debt led to the Defendant’s prior convictions for theft and passing worthless checks. Id. In addition to the theft and worthless check convictions, the Defendant’s criminal history shows convictions for Vandalism (over \$10,000), Burglary, and Driving While License Suspended. Id. at Pages 5-8. Further, the Defendant has other pending charges in other counties. Id. The Defendant’s employment history shows that he has experience as a plumber’s helper and sales representative for a lighting company, with incomes ranging from \$13.00 per hour (plumber’s helper) to \$1,800 every two weeks (sales representative). Id. at Page 9. One of the Defendant’s previous employers (the plumber) stated that “[The Defendant] has the ability to do anything but wants something for nothing. He is not able to be trusted due to his ease of stealing. I know of no other way to word it.” Id. at Page 10. Nonetheless, the Defendant was able to obtain a job at Ferguson Lighting while on probation; the Defendant’s salary at that job was \$1,800 every two weeks. Id. at Pages 9-10.

IV. Conclusion

Considering the Defendant’s financial resources, lack of reported debts, and his proven ability to earn while on probation, the Court finds that the amount of restitution in this case will be \$60,000.00. The Defendant may pay this judgment in 72 monthly installments of \$833.33 (with the extra \$0.24 to be paid during any of these months), during the term of his six-year probation in this case. The first payment will be due by the end of the first month of the Defendant’s probationary period.

IT IS SO ORDERED.

/s/ [Original Signature on File at Clerk's Office]
M. KEITH SISKIN
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing Order has been delivered via U.S. Mail (to last address on file), postage prepaid, to the following:

Sean Williams, Esq.
Assistant Public Defender
102 South Maple Street
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On this the _____ day of _____, 20____.

Deputy Clerk